Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended;	)	CC Docket No. 96-149
	)	
and	)	
	)	
Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area	)	

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI TELECOMMUNICATIONS CORPORATION

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SUMMARY

MCI agrees with the Commission's proposals in the NPRM that seek to ensure that BOC entry into in-region, interLATA services and interLATA information services through an affiliate does not produce the same anticompetitive consequences that resulted under the former Bell System.

It is clear that Sections 271 and 272, and the Commission's authority thereunder, extend to both interstate and intrastate interLATA services. MCI also agrees that Section 272 makes no distinction between domestic and international services. Pursuant to Section 272(h), the Commission should find that previously authorized BOC interLATA information services and manufacturing activities have one year to comply with the separation and other requirements of Section 272. In addition, BOC incidental interLATA services should only be provided through affiliates that are subject to the same degree of separation from the BOC's local exchange services as provided by the Competitive Carrier requirements -- i.e., separate books of account, separate transmission and switching facilities, and subject to the obligation to obtain any regulated BOC services under tariff. The BOC should also make available to all carriers the same network elements, facilities, and services used in providing its own incidental services, including unbundled subloops, and on the

same terms. The Commission is clearly correct that both in-region and out-of-region BOC interLATA information services are covered by the separate affiliate and other requirements of Section 272, and that the Computer III and ONA nondiscrimination requirements governing the BOC provision of enhanced services during the pendency of the current BOC Interim Waiver Order continue to apply to BOC intraLATA information services.

The separation requirements of Section 272(b) generally should be applied in a similar manner to BOC interLATA information and telecommunications services. The Commission should find that Section 272(b)(1) prohibits the BOC and its affiliate from commonly owning or jointly using any property, including all "official services networks" and other transmission and switching facilities. MCI agrees that Section 272(b)(3) establishes an absolute prohibition on any shared employees such that the BOC and its separate affiliate may not share any in-house administrative functions. Section 272(b)(4) prohibits the separate affiliate from obtaining credit under any arrangement, including the issuance of bonds, allowing a creditor to have recourse to the BOC's assets and prohibits a holding company from securing credit partly for the benefit of the separate affiliate in a manner that would allow a creditor to have recourse to the assets of the BOC. Section 272(b)(5), which MCI views as a supplement to the nondiscrimination safeguards set forth in

Sections 272(c) and (e), requires that services and facilities not be made available under seemingly neutral conditions that actually favor the affiliate.

The nondiscrimination safeguards of Section 272(c) and (e) require that a BOC provide competitors with service of a quality or functional outcome identical to that provided to the affiliate, even if that requires the BOC to provide different facilities or services than those provided to the affiliate. The Commission should also oversee the industry technical standards process to ensure the nondiscriminatory establishment of technical standards. The Computer III nondiscrimination rules are not sufficient to enforce the safeguards in Section 272(c) and (e).

Section 272(e)(1) requires a BOC to fulfill any requests from an unaffiliated entity for exchange and exchange access service within a period no longer than the period in which it provides such service to itself or its affiliates. The Commission should revise its tentative conclusion that the Section 272(e)(3) imputation requirement is sufficiently implemented by the BOC's provision of exchange and exchange access services to their affiliates and all others at tariffed rates. In view of the BOCs' pricing of access significantly above cost, since the BOC affiliate could simply absorb any loss resulting from the high cost of access, while the BOC recovers it

by overcharging for monopoly access service, the Commission must take steps to provide meaningful enforcement of the imputation requirement. MCI recommends that the affiliate's interLATA prices or earnings be reviewed to ensure that its average or individual service prices equal or exceed a floor that includes imputed access prices.

With regard to the joint marketing of local exchange and interLATA services by BOCs, their affiliates and IXCs, the Commission should provide that BOC interLATA affiliates are prohibited from marketing BOC exchange services unless the BOC permits other IXCs to market and sell its exchange services on the same terms. Under Section 271(e), IXCs are precluded from offering interLATA and local exchange services under bundled discounts prior to BOC entry into in-region interLATA services but may provide both types of services from a single source and may advertise both together. Once a BOC obtains in-region authority, the separation requirements of Section 272 still preclude it from conditioning the availability of one type of service on the purchase of the other or offering both types of services from a single source.

The Commission should adopt strong sanctions for any violations of Sections 271 and 272 to ensure compliance. In enforcing these provisions, the Commission should find that BOC provision of varying levels of type and quality of services are

sufficient to establish a prima facie case of discrimination, with some room for variations in services and facilities to meet the individual needs of unaffiliated competitors. If the Commission subsequently finds that a BOC has violated the nondiscrimination provisions of Section 272, it can impose any of the sanctions specified in Section 271(d)(6)(A) and award damages under Sections 206-09.

Given the BOCs' market power, the Commission should regulate BOC affiliates as dominant carriers in their provision of in-region interLATA telecommunications services. Since the BOCs' access charges are already excessive, they will start off imposing unreasonable costs on their interLATA competitors. Since those same costs are ostensibly borne by the BOCs' affiliates, such excessive costs do not run afoul of the Commission's nondiscrimination and other safeguards and thus can only be curbed through dominant regulation, including the review of BOC interLATA rates or profits to ensure meaningful application of the imputation requirement.

With regard to any international services provided by the BOC affiliates, irrespective of whether the Commission regulates these entities as dominant carriers, it should impose on them conditions at least as strict as those imposed on MCI and BT in the order approving BT's investment in MCI.

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COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation (MCI), by its undersigned attorneys, hereby responds to the Notice of Proposed Rulemaking (NPRM) initiating this docket.[1] The NPRM addresses the structural separation and other non-accounting safeguards to be applied to previously barred Bell Operating Company (BOC) activities once the BOCs are authorized to engage in such activities under the criteria set forth in the Telecommunications Act of 1996 (1996 Act).[2] The NPRM also raises the issue of whether BOC affiliates providing interLATA telecommunications services should be regulated as dominant or non-dominant carriers under the Commission's Competitive Carrier scheme.[3]

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[1] FCC 96-308 (released July 18, 1996).

[2] Pub. L. No. 104-104, 110 Stat. 56.

[3] Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Therefor, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking (Notice), 77 FCC 2d 308 (1979); First Report and Order (First Report), 85 FCC 2d 1

I. INTRODUCTION

Generally, MCI endorses the approach taken by the Commission in the NPRM. The concerns raised in the NPRM properly reflect the language and intent of the separation and nondiscrimination safeguards in the new Sections 271 and 272 of the Communications Act of 1934, added by Section 151 of the 1996 Act,[4] and the need to ensure that BOC entry into new lines of business does not produce the same anticompetitive consequences as the former Bell System. Where additional protections are needed, MCI will describe the content of the regulations that it believes are necessary and will explain why its proposals carry out the intent and language of Sections 271 and 272 and are in the public interest.

II. SCOPE OF THE COMMISSION'S AUTHORITY

(1980); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Further Notice of Proposed Rulemaking, 47 Fed. Reg. 17308 (1982); Second Report and Order (Second Report), 91 FCC 2d 59 (1982), recon. denied, 93 FCC 2d 54 (1983); Third Report and Order (Third Report), 48 Fed. Reg. 46791 (1983); Fourth Report and Order (Fourth Report), 95 FCC 2d 554 (1983), vacated, AT&T v. FCC, 978 F.2d 727 (D.C. Cir. 1992), cert. denied, MCI Telecommunications Corp. v. AT&T, 113 S. Ct. 3020 (1993); Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 1191 (1984); Fifth Report and Order (Fifth Report), 98 FCC 2d 1191 (1984); Sixth Report and Order (Sixth Report), 99 FCC 2d 1020 (1985), vacated sub nom., MCI Telecommunications Corp. v FCC, 765 F.2d 1186 (D.C. Cir. 1985).

[4] In referring to a provision of the 1996 Act in these comments, MCI will cite to the section number of the provision as codified as part of the Communications Act in Title 47 of the U.S. Code.

This portion of the NPRM addresses the scope of the Commission's authority to promulgate regulations implementing the safeguards in Sections 271 and 272. MCI supports the Commission's tentative conclusion that Sections 271 and 272, and thus the Commission's authority pursuant to those provisions, cover both interstate and intrastate interLATA services.[5] In those sections, Congress expressly addressed BOC provision of "interLATA" services, making no distinction between the interstate and intrastate aspects of those services.

Nor would it have made any sense in terms of policy, economics, or technology to do so. As the NPRM points out, Sections 271 and 272 were intended to replace the AT&T Consent Decree as to interLATA telecommunications and information services, and the AT&T Consent Decree prohibited the BOCs from providing any interLATA service, intrastate or interstate.[6] Reading Sections 271 and 272 as giving the Commission jurisdiction over only interstate interLATA service would mean that the BOCs would be permitted to provide intrastate interLATA service immediately, free of any federal entry regulation. This could not have been intent of Congress. Moreover, the same concerns regarding BOC entry exist regardless of state boundaries.

Any doubts as to the intrastate application of Sections 271

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[5] See NPRM at ¶¶ 19-29.

[6] See id. at ¶ 21.

and 272 have been settled by the Commission's recent First Report and Order in the Interconnection proceeding (First Interconnection Order),[7] which stated that the 1996 Act alters the regulatory system established by the 1934 Act "and expands the applicability of both national rules to historically intrastate issues."[8] There, the Commission found that Sections 251 and 252 of the Communications Act, added by the 1996 Act, authorize the Commission to establish regulations regarding both interstate and intrastate aspects of interconnection, services and access to unbundled elements, notwithstanding the absence of any explicit grant of intrastate authority to the Commission.[9]

In reaching this conclusion, the Commission noted such factors as the command of Section 251(c)(2) to the local exchange carriers (LECs) to provide interconnection for the transmission and routing of telephone exchange service, which is a local, intrastate service, as well as interconnection for the transmission and routing of exchange access, which is an interstate service.[10] Similarly, the separation and

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[7] First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 96-98; CC Docket No. 95-185, FCC 96-325 (released Aug. 8, 1996)(First Interconnection Order).

[8] Id. at ¶ 83.

[9] Id. at ¶ 84.

[10] Id. at ¶ 87.

nondiscrimination requirements of Sections 271 and 272 refer equally to "local and long distance services" and, as in the case of Section 251(c)(2), "telephone exchange service and exchange access."[11] Moreover, they are keyed to the provisions of Sections 251 and 252,[12] which have now been found to cover both intrastate and interstate services. Thus, as in the case of Sections 251 and 252, a finding of authority over intrastate interLATA services "is the only reasonable way to reconcile the various provisions of sections [271 and 272], and the statute as a whole."[13]

Finally, Section 2(b) of the Communications Act[14] does not require a different result. Settled principles of statutory construction establish that the specific controls the general, and the later controls the earlier.[15] Since the more recently enacted Sections 271 and 272 "squarely address[] ... interstate and intrastate jurisdiction, ... Congress intended for sections [271 and 272] to take precedence over any contrary implications based on section 2(b)."[16]

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[11] Sections 271(e)(1) and 272(e)(1).

[12] See Sections 271(c)(2)(B), 271(e)(1), and 272(a)(1).

[13] First Interconnection Order at ¶ 84.

[14] 47 U.S.C. § 152(b).

[15] Smith v. Robinson, 468 U.S. 992, 1024 (1984); Patterson v. McLean Credit Union, 491 U.S. 164, 181 (1989).

[16] First Interconnection Order at ¶ 93.

III. THE SCOPE OF SECTION 272

This portion of the NPRM addresses the coverage of the separate affiliate and other safeguards of Section 272.

A. International Services

The NPRM tentatively concludes that those safeguards apply equally to domestic and international services, since the Act does not draw any distinctions between the two in defining or addressing in-region interLATA telecommunications or interLATA information services, and that its implementing regulations also should apply equally to both.[17] (In these comments, MCI will follow the nomenclature used in the 1996 Act to differentiate regulated basic services, which are referred to in the Act as "telecommunications services," from enhanced services, which, as discussed below, are roughly congruent with the term "information services" in the Act.) The Commission is clearly correct that the Act makes no such distinction, since all international services fall within the definition of interLATA services. As will be explained in Part VIII of these comments, however, certain unique characteristics of international services require additional restrictions on BOC interLATA affiliates and LECs in their provision of international services.

International services also present a unique definitional issue, which was raised in MCI's Petition for Reconsideration of

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[17] See NPRM at ¶ 32.

the Commission's Report and Order in the BOC Out-of-Region proceeding.[18] MCI argued in its Petition that because an international carrier's facilities-based outbound international traffic generates inbound "return" traffic to the same carrier, where a BOC interLATA affiliate generates such return traffic that terminates in the BOC's region, such return traffic should be considered in-region traffic under Section 271(j) and thus barred to a BOC until it obtains in-region authority. A BOC in this situation, by generating such return traffic, would be exercising the same type of control over the choice of carrier for such traffic that an 800 service customer does, requiring in-region classification. If the Commission chooses not to consider this issue in the BOC Out-of-Region proceeding, MCI requests that it be considered here.

B. Previously Authorized Services

The NPRM seeks comment on the applicability of the one-year transition provision in Section 272(h) to the interLATA services that a BOC has already been authorized to provide listed in Section 272(a)(2)(A)-(C).[19] Section 272(h) allows a BOC one year to bring its current activities (i.e., any activity in which it is engaged on the date of enactment of the 1996 Act) into

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[18] Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services, CC Docket No. 96-21, FCC 96-288 (released July 1, 1996).

[19] See NPRM at ¶¶ 34, 38-39.

compliance with Section 272. The NPRM points out, however, that Section 271(f) states that nothing in Section 271(a) -- the general restriction on BOC interLATA services -- or Section 273, which addresses manufacturing, "shall prohibit a [BOC] from engaging, at any time after the date of enactment of the [1996 Act], in any activity ... authorized by, and subject to the terms and conditions contained in" an order of the United States District Court overseeing the AT&T Consent Decree.[20] It would seem that Sections 271(f) and 272(h) can be reconciled by reading Section 272(h) as placing the separation and other Section 272 conditions on such previously authorized services but not "prohibit[ing]" them. Also, Section 271(f) exempts previously authorized activities only from Sections 271(a) and 273, not from Section 272.

Not all such previously authorized services would seem to be subject to the one-year transition in Section 272(h), however. Section 272(a)(2)(B)(iii) specifically exempts previously authorized interLATA telecommunications services from the separate affiliate requirement. Since the one-year transition requirement in Section 272(h) is keyed to "the requirements of this section [272]", it appears that previously authorized interLATA telecommunications services never have to comply with

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[20] United States v. Western Elec. Co., 552 F. Supp. 131 (D.D.C. 1982), aff'd sub nom., Maryland v. United States, 460 U.S. 1001 (1983).

the separate affiliate requirements of Section 272.[21] Previously authorized interLATA information services and manufacturing, however, do have to come into compliance in one year.[22]

C. Regulation of Incidental InterLATA Services

The NPRM next seeks comment on the non-accounting regulations that should be issued to carry out the requirement of Section 271(h) that "[t]he Commission shall ensure that the provision of [incidental interLATA] services ... by a [BOC] or its affiliate will not adversely affect telephone exchange service ratepayers or competition in any telecommunications market."[23] Although incidental interLATA services are exempt from the separate affiliate and nondiscrimination requirements of Section 272(b) and (c), the command of Section 271(h) obviously requires that sufficient safeguards be established for such services to protect competition and ratepayers, whether or not those safeguards are similar to the safeguards also applicable to

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[21] It should be noted, however, that in those instances where the AT&T Consent Decree Court imposed structural separation or other requirements in granting a waiver of the Consent Decree to allow a BOC to provide interLATA telecommunications services, Section 271(f) provides that such provision of service continues to be "subject to the terms and conditions contained in" such waiver order.

[22] See Section 272(a)(2)(A), (C).

[23] See NPRM at ¶ 37.

interLATA affiliates under Section 272(c).[24]

In the incidental interLATA services excused from the requirements of Section 272 -- especially audio, video and other programming and commercial mobile services -- it is vitally important that other carriers have the same access to the local exchange network that the BOC enjoys in its own provision of such services and that the BOCs not be able to subsidize such competitive services with their local exchange revenues. InterLATA audio and video programming and commercial mobile services are "incidental" only as a legal term of art; they are growing rapidly and are expected to be major markets. The potential advantages that the BOCs bring to those markets, on account of their local bottleneck control, present tremendous risks.

Accordingly, the Commission should require that the BOC incidental services listed in Section 271(g)(1)-(4) be provided through affiliates that are subject to at least the same degree of separation from the local exchange services as the Competitive Carrier separate affiliate requirements -- i.e., the affiliate would have separate books of account and separate transmission and switching facilities from the BOC and would have to obtain

[24] Accounting safeguards should also be established for incidental services, to be discussed in MCI's Comments in CC Docket No. 96-150.

any BOC regulated service at tariffed rates and conditions.[25] As the Commission has pointed out, the Competitive Carrier separation requirements are less stringent than the separation requirements of Section 272 but still provide some protection against cross-subsidies and anticompetitive conduct.[26] Moreover, such requirements would not contravene Congress' decision to excuse incidental services from the separation requirements of Section 272, since the 1996 Act "shall not be construed to modify, impair or supersede Federal ... law unless expressly so provided in such Act or amendments."[27] Thus, Congress "did not intend by implication to repeal [the Commission's] authority to impose ... regulatory treatment as [the Commission] deem[s] necessary to protect the public interest...."[28]

In addition, for each service listed in Section 271(g), the BOC must make available to all carriers the same network elements, facilities and services used in providing its own incidental services on an unbundled basis and at the same rates,

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[25] The signaling functions listed in subsections (g)(5) and (g)(6) are a special case requiring somewhat different treatment. They do not constitute the type of stand-alone interLATA services that are listed in subsections (g)(1)-(g)(4) but are provided to facilitate other services. Those functions are local exchange monopoly functions and should be regulated as such. Thus, they should be subject to all of the requirements of Sections 251 and 252 as well as the nondiscrimination requirements proposed here.

[26] BOC Out-of-Region Order at ¶ 31.

[27] Section 601(c)(1) of the 1996 Act.

[28] BOC Out-of-Region Order at ¶ 29.

terms and conditions. In order to assure such equal access, all network elements, facilities and services used in providing a BOC's incidental services should satisfy the comparably efficient interconnection (CEI) parameters established in Computer III,[29] particularly nondiscriminatory access to unbundled network elements, standardized interface functionality, equal technical characteristics, the same installation, maintenance and repair time provided to the BOC's own services, and equal end user access to signaling and other functions utilized in the BOC's provision of its services.

One of the network elements that must be unbundled to assure equal access for competitive incidental service providers, particularly video service providers, is the local loop. Competitors will need access to unbundled loop subelements -- network interface device, loop distribution, digital loop carrier/analog cross connect and loop feeder -- in order to reach their customers on the same footing as the BOCs' incidental services. As MCI explained in its Interconnection comments, none of these subelements involves proprietary equipment, and such unbundling is technically feasible right now. For example, MCI explained in its Interconnection Reply Comments that, contrary to

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[29] Amendment of Section 64.702 of the Commission's Rules and Regulations, CC Docket No. 85-229, Phase I, 104 FCC 2d 958, 1039-42 (1986)(Computer III Order), on reconsideration, 2 FCC Rcd 3035 (1987); Phase II, 2 FCC Rcd 3072 (1987) (collectively, Computer III Orders), vacated and remanded sub nom., California v. FCC, 905 F.2d 1217 (9th Cir. 1990).

Bell Atlantic's statements, Integrated Digital Loop Carrier can be unbundled through a variety of techniques.[30]

In the First Interconnection Order, the Commission declined to identify the feeder, feeder/distribution interface (FDI), and distribution components of the loop as individual network elements because the proponents of such unbundling did not address the BOCs' network reliability concerns relating to subloop unbundling. In particular, the BOCs claimed that access by a competitor's personnel to loop equipment necessary to provide subloop elements, such as the FDI, raise network reliability concerns for customers served through that FDI.[31] MCI, however, does not understand how bona fide reliability concerns can realistically be raised in this situation. Incumbent LECs have to go into the FDI every time they provision a new circuit today and, if the Commission were to order subloop unbundling, would have to go into it to provision distribution to a carrier-customer supplying its own feeder. The installation work plan would be essentially the same in either case and the risk no greater than it is now. It is the BOCs, therefore, that have not sufficiently justified their stated network reliability concerns.

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[30] See MCI Interconnection Reply Comments at 30. Obviously, where a BOC does not have a particular loop subelement, such as loop distribution facilities, that subelement would not have to be created just for competitors.

[31] First Interconnection Order at ¶ 391.

In short, all of the separation and nondiscrimination rules proposed above for incidental interLATA services are feasible and necessary to fulfill the Section 271(h) requirement to "ensure that the provision of [incidental interLATA] services ... by a [BOC] ... will not adversely affect telephone exchange service ratepayers or competition in any telecommunications market."

D. The Impact of BOC Mergers

The NPRM tentatively concludes that the in-region states of an entity created through the merger of two BOCs shall include all of the in-region states of each of the two BOCs.[32] That is clearly correct, especially given the definition of a BOC in Section 153(4)(B), which includes "any successor or assign of any such company that provides wireline telephone exchange service."

The Commission also asks whether the safeguards proposed for BOC interLATA affiliates will provide sufficient protection during the pendency of an announced BOC merger. One problem that can be foreseen is a situation where one BOC's interLATA services originate in a merger partner's service area during the pendency of a proposed merger. Such services would be out-of-region for the BOC providing them, and thus not covered by the Section 272 requirements, but potentially in-region for the merged entity. That situation was addressed, however, in the BOC Out-of-Region Order, in which the Commission determined that such services

[32] NPRM at ¶ 40.

would have to be reviewed on an individual case basis.[33] That requirement should be sufficient to address any concerns raised by proposed BOC mergers.[34]

E. InterLATA Information Services

The NPRM tentatively concludes that both in-region and out-of-region interLATA information services are covered by the separate affiliate and other requirements of Section 272.[35] This conclusion is clearly correct, given the language in Section 272(a)(2)(C), addressing interLATA information services, and the contrasting terms of Section 272(a)(2)(B), which addresses interLATA telecommunications services and explicitly exempts out-of-region services.[36]

The NPRM next addresses several issues related to the nature of the services included in the category of "interLATA information" service. The first such question is whether

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[33] BOC Out-of-Region Order at ¶ 33.

[34] For the same reasons as stated in the BOC Out-of-Region Order, the same requirement of an individual case review should also be applied to the out-of-region services of either partner to a BOC joint venture that originate in the partner's region, from the time that the venture agreement is signed until the venture is no longer operative.

[35] See NPRM at ¶ 41.

[36] It is well settled that an explicit exclusion appearing in one provision of a statute but not in another provision of the same statute logically implies that the exclusion is inapplicable as to the latter provision. League to Save Lake Tahoe, Inc. v. Trounday, 598 F.2d 1164, 1171 (9th Cir. 1979).

"information service" under the 1996 Act is the same as the Commission's category of "enhanced service" under Section 64.702 of the Commission's Rules and Regulations.[37] As the NPRM points out, the definition of "information service" in the Act was based on the AT&T Consent Decree definition, which was construed as roughly equivalent to the definition of enhanced services.[38] Accordingly, the types of services that have been considered enhanced services, including voice mail, audiotext and protocol processing services, are all included within the category of information services.[39]

Another series of questions relating to the nature of the services encompassed within the category of "interLATA information services" concerns the distinction between interLATA and intraLATA information services and whether the Commission's Computer III and open network architecture (ONA)[40] requirements should govern intraLATA information services.[41] Given that the definition of "information service" was based on the AT&T Consent

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[37] 47 C.F.R. § 64.702.

[38] See NPRM at ¶ 42 & nn. 85, 86.

[39] Examples of enhanced services are given in note 84 of the NPRM.

[40/] Filing and Review of Open Network Architecture Plans, 4 FCC Rcd 1 (1988), recon., 5 FCC Rcd 3084 (1990) (BOC ONA Reconsideration Order), 5 FCC Rcd 3103 (1990) (BOC ONA Amendment Order), erratum, 5 FCC Rcd 4045 (1990), aff'd sub nom., California v. FCC, 4 F.3d 1505 (9th Cir. 1993).

[41] See NPRM at ¶¶ 43-50.

Decree definition, as noted above, and that the term "interLATA" was used in the AT&T Consent Decree, it seems logical to adopt the AT&T Consent Decree Court's usage in determining the scope of the term "interLATA information service." Thus, as a general matter, an information service should be considered interLATA if it is accessed across LATA boundaries using an interLATA link provided or selected by the BOC, rather than by the customer.[42] Accordingly, where a BOC has sought, prior to the passage of the 1996 Act, an AT&T Consent Decree waiver to provide an information service, such a service would presumptively be considered an interLATA information service.[43]

The Commission is correct in its conclusion that its pre-1996 Act regulatory requirements governing BOC provision of enhanced (or information) services should continue to apply to intraLATA information services,[44] although its expression of what those requirements are is somewhat garbled. As noted above, the 1996 Act clearly states that "[t]his Act and the amendments made by this Act shall not be construed to modify, impair or supersede Federal ... law unless expressly so provided,"[45] and the Commission has held that the "Federal ... law" not superseded by

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[42] See the example cited in note 87 of the NPRM.

[43] See NPRM at ¶¶ 46-47.

[44] See id. at ¶¶ 48-49.

[45] Section 601(c)(1) of the 1996 Act.